

FOREIGN DIRECT INVESTMENT IN AFRICA: SECURING CHINESE INVESTMENT FOR LASTING DEVELOPMENT, THE CASE OF WEST AFRICA

Paulin Houanye, University of International Business and Economics

Sibao Shen, University of International Business and Economics

ABSTRACT

At the end of the 20th century, when investors were actively seeking a favorable and secure place for their capital investment, the African continent rarely crossed their minds. Recent misgivings experienced by financial markets around the world and the increased demand of natural supplies forced investors to focus on Africa. This circumstance, for over a decade, has put all Africa, including both developed and industrialized countries in an embarrassing position with very low foreign investment. It is not possible to discuss Africa's development without referring to the current Chinese investment in Africa. In the past twenty years, China's interest in Africa has grown significantly. This has simultaneously aroused intense debates within the international community because it has the ambition to set up long-term partnerships with African countries. This new state of affairs will inevitably create legal protection problems for the interests of each party. This article examined the impact of China's investment on African countries development. We examine how Chinese investors face challenges in Africa and what legal protection the host country provides to the investors to secure their profit and at the same time protect their own interest.

JEL: F21, K33, P33

KEYWORDS: Foreign Direct Investment, Foreign Protection of International Investment, Developing Countries and Regional Integration

INTRODUCTION

Historical evidence shows the African continent has attracted the attention of foreign investors, actively seeking a favorable and secure place for their capital investment. The fundamental reason was the legal and judicial insecurity that prevailed in Africa after the 1960's. But, the most recent demand for natural supplies have increased attention on Africa. For over a decade Africa has been in an embarrassing position with low foreign investment. It is not possible to discuss Africa's development without referring to Chinese investment in Africa. China has become the leading country on foreign direct investment in Africa. For the last two decades, China's interest in Africa has grown exponentially, resulting in debates within the international community. It has a noble ambition to set up long term relationships with its African partners. But China is not a new player in Africa, since it has invested in African countries before events such as Sudan in 1994 (Pierre-Antoine B. 2006). But during that time, the investment was low and protection was not a serious issue. The new state of affairs will inevitably create a legal protection problem for each party because foreign investment is subjected to the law and administrative control of the host country and it therefore means guarantees offered to foreign investors must not risk the States' right to legitimate rule.

This study focused on West Africa due to the recent evolution of Chinese companies' presence in West Africa, the rapid development of its Foreign Direct Investment (FDI) in the region. And, especially because of strong desire of the State Members of the Economic Community of West African States (ECOWAS) to successfully integrate the region and harmonize the ECOWAS Investment policies.

Recent, Chinese investment has been increasing in West Africa due to the presence of material supplies; and the procedure of harmonizing investment policies in the region into a single code, adopted on June 2008 by the Authority of the Head of States, to simplify the investment regulatory regime by the West African States. But investors are facing some constraints including cultural issues and the failure of the investment climate which is not conducive for investment in the region.

The purpose of this paper is to examine and explore the increasingly important economic impact of the Chinese FDI on West African countries development. It will also seek to examine how Chinese investors face challenges in Africa and what legal protection the host country can provide to its foreign investors to secure their profit and at the same time protect its own interest.

China's economic growth is causing China to increase its investment activities in Africa to make it more relevant to African countries. It has become a new lender for African countries. This position is not determinable by the duration of its presence on the continent, but the exploding increase in amounts lent to African countries and by its importance as a lender outside the existing dominance of development western actors. There are needs to protect its investments to allow continuity of foreign direct investment. This paper will review the evolution of Chinese Foreign Direct Investment in Africa by identifying the model of Chinese partnership with Africa, the prospects for China's role in developing Africa's infrastructure within the context of China's new trend investment engagement in Africa. We also analyze the various obstacles and challenges faced by Chinese investors, and finally the establishment of laws and rule of the investment policy in the regional integration organization to improve, increase and protect foreign investment as well as Chinese investment in the region.

The study will proceed as follows. The first part introduces our work. In the second part, we present a literature review of the sino-african partnership. The third section discusses Chinese FDI in Africa through the new trends of Chinese FDI in Africa. The fourth section focused on various risks for investment in Africa and their effects on the development. In section five, we underline the opportunities of economic development by securing Chinese's direct investment in the continent. This part of the work also focuses on the improvement of the local laws to attract more significant foreign direct investors in particular in West Africa. Finally, section six concludes the work.

LITTERATURE REVIEW

The literature has concentrated on identification of drivers of Chinese investors in Africa, the rapid growth of sino-african relationship, the potential impact of Chinese outward FDI of African continent development. Historically, China has had a long economic and political relationship with African countries which goes as far back as 500 years old (Mohan and Kale, 2007). Since 1990, the forces unleashed by the China Open Door Policy of 1979 created a significant momentum in China's interest in the mainland continent (Shola Oyewole, 2007). The recent note of African Development Bank report named "China and Africa: An Emerging Partnership for Development?" shows that in 2008, sino-african trade reached \$114 billion (Schier R., 2011). This study focuses on the relationship from a post-financial crisis viewpoint; outlines details of both China's trade with Africa and its foreign direct investment into the continent; reviews China's manufacturing and industrialization policy in Africa; looks at China's aid and assistance program in the continent; discusses Chinese infrastructure investments and their implications for African regional integration; and finally analyzes the China-Africa relationship in the context of international aid architecture. It notes that Chinese competition could threaten African countries that export manufactured products and also notes that unlike western donors, China has a different perspective on the encouragement of good governance in Africa.

China's contemporary policy for Africa is to focus on few factors that are important, such as its need for energy security driven by its domestic development strategy; new market and investment opportunity to

establish export markets for its light manufacturing, services, agro-processing, apparel and communication offerings; diplomatic and development support for its The one-China principle; and forging partnership strategic (Konings P. 2007).

Regarding the Post-crisis prospects for China-Africa relations, Jing, G. and Richard S. (2011), noted that the global crisis did not appear to dent China's enthusiasm for investing in Africa and "surveys undertaken in early 2009 in Beijing indicate that entrepreneurs would continue to invest in, and trade more, with Africa". The authors pointed out the rapid reduction of Chinese export to Europe and American markets led to finding new markets, such as in Africa.

For some researchers, Africa's economic growth has been predicated on higher commodity prices while diversification into manufactured production has been limited (Mary-Françoise, R. 2011). In her study, Mary-Francoise (2011) pointed out the lack of African success in manufacturing compared to Asia. The only problem according to her, is that Africa's economic policies as well as governance and institutions have been far weaker than in many of the successful Asian economies (see Table 1).

Promoting the investment climate in Africa needs a clear view of the proper role of the public and private sectors in economic development. African countries can reduce risk through macroeconomic stability. This means that inflation has to be controlled, exchange rates stabilized and interest rates set at realistic levels. Government action needed to introduce fundamental changes in the macroeconomic environment, stimulate local private and foreign direct investment through the removal of distortions in the incentive structure and to encourage a more efficient allocation of resources and factor inputs in line with supplies endowment and national development objectives (Karamo N.M. S. 1994).

The structure of Chinese Infrastructure Investments and African Regional Integration was drawn to the attention of Richard S. and Alex R. in 2011, who both underline the importance of regional integration if Africa is to reap the benefits of economies of scale, access to globalized markets and strengthen its position in international negotiations. Their work underlines the importance of China trading and dealing with Africa's various regional trading and economic groupings such as the Economic Community of West African States (ECOWAS), the Common Market of Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC), and notes that such regional trade has been growing over recent years.

The legal protection of international foreign investments by states is one key instrument and an important mechanism to ensure the sustainable economic development in African countries (Charles Edward M. 2007). Other authors also explained how International direct investments can promote sustainable economic development, and the state of effective legal protection of international investments in ECOWAS countries (Gilbert A. and Falou S. 2008). Gilbert and Falou's study argues that African countries in the Western region have so far made commendable efforts to reform their legal and institutional frameworks for promoting investments. The legal, business and economic environment for FDI in West Africa and the protection of FDI is regulated at various levels, by international agreements or treaties, West African regional agreements and national codes or legislation of each State member of ECOWAS.

THE TRENDS OF CHINESE FOREIGN DIRECT INVESTMENT IN AFRICA

The last two decades, saw China rapidly becoming an important source of outward foreign direct investment. The recent profound increase has made an important change in Chinese foreign investment policy as well as in the world economy and geopolitical competition (Mary-Françoise R., 2011). The landmark Bonding Asia-Africa conference in 1955, is seen as the foundation stone of Sino-African modern partnership. Despite some important economic projects, the cooperation between 1955 and the

mid 1990's was mainly political. But the important period of their relations started when Chinese Government policy was the main determinant of outward foreign direct investment. Most Chinese companies have been moved into African countries in the last 5 years. In the context of China's growing role as an investor in Africa, concerns over China's investment behavior are being raised and Chinese enterprises are under increasing pressure to be more responsible global players and the Government has encouraged such efforts. According to Mary-Françoise R., China's development philosophy must serve as a model for Africa and an alternative source of trade and finance from Africa's traditional development partners. China's involvement with Africa goes beyond trade and investment and includes development assistance (Schiere R., 2011). Our purpose is to establish the Chinese model as a harbinger of a new international economic regime or a continuation of old ideas with a more modern extent.

China's Presence in Africa: a New Economic Partner for Africa's Development

Africa is the world's second-largest and second-most populated continent after Asia. It comprises of 54 independent countries with many cultures, diverse customs and languages; but it is also known to be the world's poorest continent despite its natural resources. China's interest in trade and investment with Africa, home to over one billion of the globe's poorest people and the world's most formidable development challenge, presents a significant opportunity for growth and integration of the Sub-Saharan continent into the global economy (CIAWF, 2009). China is not a new player in the African continent, and its economic and political presence, also its impact has grown exponentially in the last few years. This implies that African countries face a lot of new challenges for China's role in their continent. Like other parts of the world, Africa is very much affected by the phenomenal growth of the Chinese economy. In the view of China's aid strategy in Africa, the main motive for its partnership with African countries is to gain access to the abundant raw materials of Africa. Alden, C in 2005, pointed out that the good reason and important requirement of Chinese presence in Africa is China's insistence on recognition of its one China policy by African States. This is the political foundation principle, which governs its establishment and development relations with African countries and regional organizations. In its main co-operation driver's way, "China will continue to strengthen solidarity and cooperation with African countries in the international arena, conduct regular exchange of views, co-ordinate positions on major international and regional issues and stand for mutual support on major issues concerning state sovereignty, territorial integrity...."

China is the world's second largest consumer of oil and energy, with its limited natural resources, its dynamic economic growth fuels an ever-increasing need for energy and strategic minerals. Africa is the best place to get these resources. China's attraction to Africa's relatively under-exploited petroleum and other natural resources can be traced back to 1993, when it changed its policy from a net exporter to a net importer of oil (Joshua E. and Joshua R., 2003). Sudan was the first African country to receive Chinese investment for oil in 1994 (Pierre-Antoine B., 2006). Ten years later, China was consuming 5,460,000 barrels a day (bbl/d), outstripping Japan's 5,430,000 bbl/d but still some distance from the United States's 19,700,000 bbl/d (Erica D., 2004). Investigation reports show that Chinese interest in Africa is for the foray of the continent's energy business.

Another important reason for Chinese presence in Africa is economic interest (Akinlo, A. E. 2003), which aims to establish a new market and investment opportunities. Despite the small consumers market for African goods, the Africa trade relationship with China has had a significant impact on African economic growth and development.

China has been able to find a market for low-value consumer goods brought in by Chinese-dominated import companies and sold through a growing informal network of trading posts across urban and rural Africa. "Chinese products are well suited to the African market. At the time, China is in a position to make basic products at very low prices and of satisfactory quality." (Zhou Z. 2004) Chinese private

companies are actively investing in Africa by flexible and diversified means. The number of private enterprises investing in Africa accounts for more than 70 % of the total number of foreign enterprises investing in Africa. In the last decade, there are officially 820 Chinese enterprises (He W., 2006) being established in Africa and the trade volume between Africa and China is more than €29 billion (Nathalie F., 2006). China is now the third commercial partner of Africa since 2005. Its growing population and energy demand is pushing it to forge joint-partnerships with several African states rich in natural resources where China invests capital and develops the country's infrastructure in exchange for employment and favorable terms for extracting raw materials to China (Chen D., 2011). China has started and increased agricultural co-operation and investment with Africa in trade and other commercial activities since 2000. With the Government encouragement and the recent challenge of climate change, Chinese agricultural investment in Africa has developed against a backdrop of closer economic ties with the continent. Chinese investors have also established, in the textile and agro-industries, joint ventures that aim to export goods to the West at concessional rates by using the special provisions of the United States' African Growth and Opportunity Act (AGOA) and the European Union's Continual Agreement.

During the radical revolution movement period (1966-76) which saw China's youths lose a generation of education, a slow economic production and trade, virtually severed China's relations with the rest of the world as well as Africa (Mary-Françoise R., 2011). As a result China's desire to be an economic power was set back significantly. This situation has made a critical change in the China's foreign policies and led it to open the trade relations with the West. Since then, it started playing an active role in international organizations, and diplomatic relations were established with countries willing to recognize the People's Republic as the government of China rather than the Nationalist government on Taiwan. On January 1st, 1979 China's full diplomacy was recognized to the detriment of Taiwan. China's insistence on recognition of its One-China policy by African countries has forced it to provide aid and investment to the mainland. Its economy has become the fastest growing economy in the world (in spite of not having changed its communist political stance), which has been aided by access to cheap resources in Africa. In examining the relationship-change over time, what is China's strategy to increase its investment in Africa?

Chinese Investment Model in Africa

Many factors have made China and Africa's relationship distinct, compared to the West's relationship with Africa. China kept an active menu of aid projects in more than forty-five African countries and its investment assistance to Africa in the form of building infrastructure boasts a long history. The Chinese model of investment in the continent brings in essence economic growth objectives and foreign policy, together guiding trade and investment decisions in Africa along with zero or near-zero percent interest financial and technical assistance. Chinese bid competitively for resource and construction projects using investment and infrastructure loans (Zafar A., 2007). Many Africans view Chinese investment in the continent as different from western investment. The neo-liberalism reform usually required by the World Bank under its conditional provision does not affect the Chinese investment model in which aid comes without strings attached. China is having a profound impact on African economies by building a network of trade, aid and investment and some important infrastructures with close to fifty countries. Chinese investment in Africa is not only beneficial to the Africans, but also to the Europeans and the Americans. China's investment are modeled by financing development projects in Africa as direct investment has very little interest for the West. In order to grow, African economies need some important infrastructure as well as Chinese investment, which can help these African countries build roads, railways, hospitals and schools concluded the author. In Africa, China is playing an important role by financing and providing much expertise needed by the continent. The main trends of Chinese investment in Africa are as follows.

Firstly, Chinese Foreign Direct Investment structure which is based on the noble purpose to establish long term relationships with African governments is very different from Western countries model which is to involve private investors and does not undertake a long-term presence in the continent. Secondly,

Chinese investment encourages the development of infrastructure in Africa. Thirdly, infrastructure must be improved to facilitate the access of the African products to regional and international markets. Africa's exports to China are increasing, while trade between the other major continental markets and Africa is stagnated. Fourthly, Africa's imports from China actually are more diversified than its exports. There are three main types of products imported: machinery and transport equipment; manufactured goods and handicrafts products for improving local consumption and which has contributed to the emergence of a consumer society in Africa. And finally, the creation of special economic zones exploited by the Chinese in African countries since 2006 should focus on value-added manufacturing by building the capacity of many African countries.

Africa still has challenges in its relations with China. But its rush to become competitive impacts the domestic manufacturers of some countries with squeezed China-sourced imports. However, it is consistent with China's policy as well as the country's goal to lessen its strain on its energy resources and to locate markets for its goods.

New Trend of Chinese Investment in Africa

Africa provides China with a good opportunity to secure a sustainable access to raw materials which are necessary for its growth. Africa is now a laboratory for Chinese manufactured goods. The breakthrough of the Chinese presence in Africa follows four phases: firstly the oil, then minerals, and construction, and finally exports with private operators, which is not necessarily related to the state apparatus. The fourth and last aspect constitutes the focal point of the trend of the new Chinese investment model in Africa. Recent developments in the Chinese presence on the continent focused on investments in the private sector and SMEs. With the Chinese government encouragement policy Going out, many private companies have turned to Africa in recent years. In terms of the number of projects, the vast majority are not in natural resources areas. These investments provide favor to the business model and distribution that promotes not only easier access of foreign companies, but also promotes and supports local economic development. The majority of Chinese enterprises in Africa are private companies. There are five factors leading them to invest and operate in Africa: the first one concerns the access to local market. The second one is the intense competition in domestic markets. The third is the transfer abroad of domestic excessive production ability. The fourth is the entry into new foreign markets via exports from host and the fifth one is its ambition for taking advantage of African regional or international trade agreements.

Chinese enterprises are less risky than their Western counterparts. They are not subject to the same social and environmental safeguards. Most Africans are welcoming Chinese investment and products. The history of traditional Western aid and investment in Africa is one of a nagging "I correct you because I want what's best for you" parental-like stronghold over the continent. Tired of "the politically motivated, finger-wagging approach of western governments," Africans have welcomed China's emphasis on pure business. Some of the key areas of Chinese investment, which align with improving the efficiency of resource extraction, are telecommunications, energy and physical infrastructure. These areas have traditionally been ignored by donors in Africa, who have instead favored social development programs such as education and health. Chinese companies are using some countries for its re-exports, particularly in the textile industries.

Reasons for Investing in Africa

As mentioned above, the primary evidence of the Chinese private investment in Africa resulted from both domestic and general reasons. Since 1990, China had started an economic restructuring with recognizing the need to upgrade its manufacturing capacity for increasing its international competitiveness (Cai C., 2006). The success of this economic restructuring policy led many new entrants into the market. But the inability to find sufficient domestic consumption created excess production capacity and led many firms

to look to establish operations overseas in new less challenging markets. On the other hand, because both China and Africa are developing countries, Chinese private companies feel comfortable in investing in Africa (Cai C., 2006) and the commercial opportunities in Africa are profound. Also, the introduction by the US government in the late 1990s of preferential textile quotas for Africa encouraged some Chinese firms to establish operations in African countries to exploit this opportunity.

INVESTMENT RISK IN AFRICA

Risk is the potential that a chosen action or activity will lead to a loss. A common definition for investment risk is deviation from an expected outcome. The notion implies that a choice having an influence on the outcome exists. Potential losses themselves may also be called "risks". Almost any human endeavor carries some risk, but some are much more risky than others. People invest money to earn a return on their money, but often they receive less than expected—indeed, sometimes the return can be negative, when the investor receives less than the initial investment. With some investments, the entire investment can be lost. Investment risk is the chance that you will receive less than expected return from an investment, and differs according to the type of investment. There are many types of risk that are caused by different factors, or which affect different investments to varying extents. Some factors affect most investments and are called systematic risks. Other risks, such as sector risks affect only a particular sector of the economy. Some risks are specific to a business or asset, and are called nonsystematic risks, or diversifiable risks, because such risks can be lowered by diversified investments. In general, the more active the investment strategy, the more an investor will need to pay for exposure to that strategy.

When investors are looking for a good profit, they also think about the potential risk associated with their investment in the host country. It is well known that investors make decisions based on a function that includes the rate of return and the risk of any investment choice: the higher the risk, the higher the required rate of return (Benno N., Lopamudra C., Lebohang L., Vijaya R., and Jerome W., 2007). Each investment carries its own particular risk-return ratios. However, in Africa, a number of environmental factors, external to the individual investment, tend to raise the risk, and thus, for any given rate of return, reduce the rate of investment. The African continent is considered as a high-risk place for investment and there are a few reasons supporting this statement according to our understanding:

Political Instability

Most of the African region is politically unstable because of the high incidence of wars, frequent military interventions in politics, and religious and ethnic conflicts. Apart from Ethiopia, Liberia and South Africa, the other African countries came to political independence later and more rapidly than those of other developing regions. The historical political evolution of sub-Saharan African countries proved that in 1966 the average independent state in Africa had held sovereignty for 10 years less; its counterparts in the rest of the developing world had been independent for the better part of a century. Colonial structures of political control were both arbitrary and effective because of the boundaries cutting across historical patterns of politics and trade routes. This has contributed greatly to the various regional conflicts on the continent between neighboring nations, wars often tribal, ethnic, etc.

There is some evidence that the probability of war is very high in the region (Rogoff K., and Reinhart C., 2003). In their recent study, Rogoff and Reinhard had worked out the regional susceptibility to war indices for the period 1960-2001 and found that wars are more likely to occur in Africa than in other regions. Their study also pointed out that there is a negative statistically significant correlation between FDI and conflicts in Africa.

Benno Ndulu with Lopamudra Chakraborti, Lebohang Lijane, Vijaya Ramachandran, and Jerome Wolgin also argued that in the last two decades or so, Africa has experienced a debilitating descent of states into

persistent internal conflict that has become an all-too-familiar phenomenon across the region. In fact, conflicts are now arguable the single most important determinant of poverty in Africa. Conflicts affect the economy through reduced investment in both physical and human capital, as well as through the destruction of existing assets, including institutional capacity, and these are reflected in reduced economic growth.

The incidence and severity of conflicts in Africa have had a robust, negative effect on the growth rate of income. The evidence showed that the countries that experienced civil wars had an average income of 50% lower than that of countries that experienced no civil war, and sometimes, the indirect cost of the war could be higher than the direct cost because conflicts have always caused serious reversals in health and other human development aspects. As we see, political stability is one of the most important determinants of Foreign Direct Investment in Africa.

Macroeconomic Instability

Despite the fact that the macroeconomic stability has been achieved in most African countries now (low inflation, low public deficits), the investment environment is still uncertain because investing in Africa is still riskier than doing so elsewhere (Collier P., 2000). The lack of macroeconomic stability, evidenced by the high incidence of currency crashes, double digit inflation and excessive budget deficits, has also limited the region's ability to attract foreign investment. The risk in business, implies more profitable opportunities (Bigsten, & al. 1999b). There is no doubt that firms' investments are very low in Africa, pointing to other forms of uncertainties (political, rule, contractual, infrastructure). Investment and growth are higher in more stable countries in Africa and more recent evidence based on African data suggests that countries with high inflation tend to attract less Foreign Direct Investment (Onuyeiwu S., and Shrestha H., 2004).

Lack of Policy Transparency

In most sub-Saharan African countries, it is not easy to accurately identify the specific aspects of government policy because of the political regime changes in several countries. Regional policy changes and lack of transparency in macroeconomic policy are also problematic. The consequence of the lack of transparency in economic policy in a country is increases in transaction costs due to strict regulation while reducing the incentives for foreign investment. In Africa, the situation is one of concern and needs to be contained.

China's lending is generally suitable for Africa and often help to finance infrastructure and other projects which are the main needs of African countries. Unfortunately, we see that that China more willingly lends to countries that have large outstanding debts or that are rich in resources. This increases the risk to debt sustainability of poor countries and lack of transparency in the process of negotiating loans with China. The loan agreements between China and African countries are also not open to the public. This leaves a lot of power in the hands of a few African leaders and taints the process of transparency. The lack of transparency makes the conditions and the assessment of debts difficult. It also increases the risk that funds will not be used as intended and might be cases of illegitimate debt in the future. The lack of a favorable investment climate also contributed to the low FDI trend observed in the region. In the past, domestic investment policies were not conducive to the attraction of FDI. But since 1980, intensive efforts have been directed at generating economic recovery in West Africa. Much attention has been given to the need to promote investment because investment is essential in all West African countries to promote regional integration.

Information Imperfections

If investment projects with high social returns exist in Africa, securing financing for them requires overcoming informational frictions. We trust that investment projects with high social returns exist in Africa and socially productive investment opportunities also exist on the continent, but it is not sufficient. The securing financing for them requires overcoming informational frictions. It is also necessary that potential external creditors be aware of such opportunities. Frictions are the most important variables explaining the geographic distribution of cross-border equity flows. The information-related variables explain a large share of the variance in the allocation of cross-border equity flows, with countries from which information flows freely receiving larger flows than those that are relatively more opaque. Informational frictions play also a prominent role in the literature on home bias in the allocation of financial portfolios, as well as in the analysis of herding and catching in international capital markets. Information costs have also been cited to help explain why investors holding highly diversified international portfolios tend to react aggressively to “news” in the form of market rumors. Informational frictions may help to explain why international lending by banks tends to have a regional bias. The information costs may represent an independent obstacle to investment in Africa. Informational frictions may be particularly severe in the case of Africa because of distance, isolation and poverty. The effects of distance and isolation are self-evident.

High Protectionism

The low integration of Africa into the global economy as well as the high degree of barriers to trade and foreign investment have been identified as a constraint to boosting Foreign Direct Investment (FDI) in the region. The relationship between openness and FDI flows to Africa must be very positive and suitable to the continent. There are also other factors that contribute to the low FDI flows to the region such as the high dependence on commodities, the intensification of competition due to globalization which has made an already bad situation worse in Africa. Globalization has led to an increase in competition for FDI among developing countries. Weak law enforcement stemming from corruption and the lack of a credible mechanism for the protection of property rights are possible deterrents to FDI in the region. Foreign investors always prefer to make investments in countries with an effective legal and judicial system to guarantee the security of their investments. Investors can choose globally where to put their money and countries shouldn't make it too difficult for foreign investors if they want to benefit from that money. Sometimes, the African governments stifle investment by their regulatory policy whereas companies can only invest in big projects in countries where there is certainty and security for their profits and operations.

Africa has incredible potential. While capital flows have occurred quite successfully elsewhere, most notably in Asia, Africa has left behind. Despite Africa's enormous potential, low cost labor and vast natural resources, investors, quite frankly, remain reserved. They are afraid of putting their money in a place, which is often perceived as a continent affected by war, famine, AIDS, and corruption. Although specific financial mechanisms are necessary, they cannot address all the risks that confront businesses in Africa. Like everyone, Chinese investors also are facing all these challenges in Africa.

Sino-African trade has continued to grow at an exponential rate, with China displacing the UK as Africa's third largest trading partner behind the US and France. China accounts for nearly 20 per cent of Africa's total exports and more than half of Africa's exports to Asia. Across the continent, the Chinese are multiplying investments in infrastructure, telecommunications and agro-businesses.

The uncertainty of the business environment in Africa and the fact that all or part of the investment costs is "sunk", the Chinese investor may also, like all traditional investors, adopt a "wait and see" attitude. To avoid this situation at a time when the African continent need to raise the level of development, African

countries need to innovate in the field of legislation and regulation of investment policies in order to make the business environment conducive.

Table 1: African Governments Stifle Investment

How Much It Costs to Build a Company				
Some selected West African countries	Number of procedures	Time requested (days)	% of cost income	% of the minimum capital for income
Benin	9	63	189.2	377.6
Burkina Faso	15	136	325.2	652.2
Cote d'Ivoire	10	77	143.1	235.2
Mauritania	11	73	109.7	896.7
Niger	11	27	446.6	844
Senegal	9	58	123.6	296.1
Some selected Asian countries				
Korean Republic	12	33	17.9	402.5
Malaysia	8	31	27.1	0
Singapour	7	8	1.2	0
Thailand	9	42	7.3	0

The table above shows the selected West Africa countries with some challenges that foreign companies may have to face for investment or start business in these selected countries. Source: <http://rru.worldbank.org/DoingBusiness/default.aspx>

LEGAL PROTECTION OF INVESTMENT IN WEST AFRICA

The provision of a legal protection to improve Chinese investment in West Africa must be a new challenge for this economic West African region. China has pledged continuing development assistance and government-backed Foreign Direct Investment to African countries. It pledged to double its investment in Africa by 2009 and to give Africa \$2 billion in preferential buyers' credits over the next three years. Chinese investment in West Africa has focused on two main areas: infrastructure and human development. Chinese aid provides funding for highly visible and to many minds, important infrastructure projects, which Western donors have long since stopped financing.

ECOWAS Investment Policy Framework

Investment policy framework is a tool, providing a checklist of issues in policy domains for consideration by any national/regional government interested in creating an environment that is attractive to all investors and in enhancing the development benefits of investment to society. Considered one of the pillars of the African Economic Community, the Economic Community of West African States (ECOWAS) is a regional integration organization, which founded in order to achieve "collective self-sufficiency" for its member states by creating a single large trading bloc through an economic and trading union. The ECOWAS consists of two institutions to implement policies, the ECOWAS Secretariat and the ECOWAS Bank for Investment and Development, formerly known as the Fund for Cooperation until it renamed in 2001. The region is a vast area of 5.1 million square kilometers with an estimated population of 300 million; its huge unharnessed water resources, arable land and large market make it an attractive place for investors. Therefore, it is a good place for Chinese investments and it has to provide a security panel for these investments. The Foreign Direct Investment is one of the flashpoints of negotiations on the Economic Partnership Agreements context with the European Union.

There are a number of actions that ECOWAS countries might take at the international level to help attract greater flows of Foreign Direct Investment. These are solely focused on attracting investment, and have little to do with assuring the quality of the investment, or helping ensure that it fosters sustainable development in countries. These options involve signing some sort of international treaty committing to certain types of treatment for investors.

Investment policy framework gives a list of questions under each theme to encourage policy makers to ask appropriate questions about their economy, their institutions and their policy settings and to help governments determine whether their policies are likely to encourage or discourage investment.

In the last two decades, the community Member States have become more determined to address the problem of low investment inflows into the region. The Economic Community of West African States has become more accommodating toward foreign direct investment as evidenced by changes in the regulatory regimes of most of the countries towards overseas investors and their investments.

As mentioned above, foreign investment is governed primarily by national law of the host state and this economic integration community is expected to provide a single economic space in which business and labor operate in order to stimulate great productive efficiency, higher levels of domestic and foreign investment, increased employment and growth of intra-regional trade and extra-regional exports. Recently, most countries in West Africa, in appreciation of the impact of the regional investment climate on national fortunes, have begun to adopt policies that improve their investment climate. The quality of investment policies directly influences the decisions of domestic and foreign investors. Transparency, property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.

Investment Policy Principles under ECOWAS

The West Africa regional community has adopted some important elements of a more coherent and comprehensive policy framework of investment, including the following. The reviews of its policies and rules affecting investment and private sector development with a view to improving the investment climate in their individual countries; a greater adherence to relevant rules and instruments on Corporate Governance; the reviews of costs and benefits of investment incentives and exchange views and experience on their use and economic impact; intensified actions to remove obstacles to business development, in particular regulations and administrative practices that obstruct or delay investment; a greater emphasis on partnership in building human capacities and skills necessary for acquiring and spreading the benefits of investment in the region; some efforts and initiatives to develop a framework for the competitive functioning of their markets which would include effective competition laws and the reform of economic regulations; some initiatives to strengthen the capacities of investment promotion agencies to disseminate information and to provide services to investors and encourage co-operation among these agencies at regional and international levels; some programs and projects to support small and medium sized enterprises and encourage their co-operation in regional projects; and consultations between business groups, private sector associations, social partners and civil society organizations to explore the development of investment opportunities and to provide input to the decision making process on investment policies, laws and regulations.

The investment policy must set laws and regulation to focus on issues as property and contractual rights, including intellectual property rights; the equal treatment of both foreign and national firms; removing the administrative obstacles to investment and Cost-benefit assessment of investment incentives.

Investment Security in West Africa

For many observers, the capacity of African countries to attract foreign direct investment is principally determined by their natural resources and the size of their local markets. The apparent lack of interest of foreign multinationals in African countries that have attempted to implement policy reforms support this argument. The continent has been much less favored than Asia and Latin America over the past decade in attracting Foreign Direct Investment. It has been argued that the reforms in many African countries have been incomplete and thus have not fully convinced foreign investors to develop activities that are not

dependent on natural resources and aimed at regional and global markets. It takes time for a country to modify its image, especially when the State has a long tradition of policy intervention, and when the reforms have been mostly symbolic with the adoption of new texts. As market size and access to natural resources are crucial determinants in the foreign multinational decision processes, so is the investment security important.

The successful European integration model has considerable attraction and impact as an example for many other regional agreements like ECOWAS (Gilbert A., Falou S., 2008). EU is assisting ECOWAS in its harmonization of its various national investment policies into a regional policy. Some established arrangements in the ECOWAS region have already provided framework of legal and regulatory for investments within the Community to operate, in order to access economies of scale in preparation to compete at multilateral level. To secure the Chinese investments in West Africa, it is now necessary to harmonize national laws of ECOWAS member States with a regional focus, which will permit the abolishment of uncertain and irrelevant provisions to promote transparency, and improve competitiveness of the regional economy.

With the putting in place of the regional investment code, locational choices of ECOWAS firms are now wider within an integrated regional market and investments of firms originating from non-ECOWAS member countries are now equally attracted to serve and exploit the consequent economies of scale and scope in the community. Codification of regional investment policies is equally expected to mobilize investment as a driving force for economic growth and development of ECOWAS Community. ECOWAS Investment Code seeks to provide the framework for designation of the region as a single investment location and is expected to enhance the regional investment climate.

CONCLUSION

As noted in the introduction, the aim of this paper is to examine and explore ways of securing Chinese foreign direct investment for lasting development in Africa, and particularly in West Africa, with the view of challenges faced by Chinese investors in Africa, the legal protection the host countries provide to its foreign investors to secure their profit and their own interest. The study also underlines which factors are instrumental in attracting Chinese foreign direct investment, and how a rise in FDI in West Africa, because of policy implementation, would ultimately influence output.

In this paper we collected data on the West African regional investment code putting in place by ECOWAS States members to provide good laws as essential promotional tool and confidence to investors and Government recently. Good laws clarify the role and responsibilities of private investors and Government, bind them to their respective rights and obligations, reduce the scope for discretionary decision-making, ensure transparency in administrative processes and certainty for investors, and provide a basis for dispute resolution (Aremu A. J., 2010). ECOWAS States members are in the process of harmonizing their investment policies in the region into a single code to simplify the investment regulatory regime. The regional investment code provides in its admission and establishment chapter the same treatment to all investors as well as Foreign Direct Investors. In its article 17, “Each Member State shall accord to investments made by investors of another Member State treatment no less favorable than that it accords, in like circumstances, to investments made by investors of any other Member State of the Community or of a third party with respect to the management, conduct, operation, expansion, sale or other disposition of investments”.

It was discovered that West African countries have become more helpful towards FDI over the last two decades, as shown among other things by changes in the countries regulatory regimes. This changing stance towards FDI has also resulted in an increase of investment promotion agencies, special economic zones and other focused mechanisms by which ECOWAS countries aspire to attract foreign investors. It

seems important and crucial first for the West African region to protect its domestic and foreign investments as well as China's.

This study helps us identify opportunities for economic development through securing Chinese direct investment in Africa and the necessary improvement of local laws in order to attract more significant foreign direct investors, in particular in West African countries, where some interesting legal instruments exist. It might trigger the critical question of the mutual benefits of the China-Africa Partnership and reduce the current risks related to foreign direct investment in all of Africa.

The prospects for attracting and keeping investment can be significantly improved when commitment to ECOWAS regional integration and harmonizing investment policies based on a high level commitment to the key principles and best practices for successful investment policies, prevail. Such simplification involves not only a business process but also cultural change in how ECOWAS nation states view those whom they regulate, and how those who are being regulated perceive the value and effectiveness of the regulation processes.

The limitation of this study includes its conceptual nature. The risk of Investment in Africa concerns endogenous matters. Factors that block the development of legal instruments, facilitators of foreign investment in African countries are not the same from one region to another. This often makes difficult study that treat all of Africa as a region. It should be helpful to proceed by regional grouping which unfortunately is also subject to problems on cultural matters of each regional organization. Each African country has a unique and important history and culture that govern its development philosophy. Our recommendation for future research is to identify if Chinese presence in Africa provides an advantage for regional organization development or if this partnership is suitable for the regional organization development or for only some selected countries.

REFERENCES

- Akinlo A. E. (2003), "Foreign direct investment and economic growth in Sub-Saharan Africa", *International Review of Economics and Business* 50, p. 569-80
- Aremu J.A., "The Process of ECOWAS Investment Policies Harmonization", *ECOWAS Common Investment Market, Private Sector Development*, P.2
- Benno N.; Lopamudra C.; Lebohang L.; Vijaya R.; & Jerome W., (2007), "Challenges of African Growth Opportunities, Constraints and Strategic Directions", *The International Bank for Reconstruction and Development / The World Bank 1818 H Street NW*, Working Paper, p.3-9
- Bigsten & al. (1999b), "Exports of African Manufactures: Macro Policy and Firm Behaviour", *Journal of International Trade and Economic Development* 8 (1) pp. 53-71
- Cai C. (2006) "Outward Foreign Direct Investment Protection and the effectiveness of Chinese BIT Practice", *Journal of World Investment and Trade* 7(5), pp. 621-652
- Central Intelligence Agency World Factbook 2009 (<https://www.cia.gov/library/publications/the-world-factbook/>)
- Charles Edward M., (2007) "The Legal Protection of International Investments in Eastern and Southern Africa – Lessons from Case"; *EzineArticles*, online at http://EzineArticles.com/?expert=Charles_Edward_Minenga

Chen D., (2011) Chinese Minister of Commerce, High Level Symposium for China–Africa Economic Cooperation, Co-organised by the Ministry of China’s Commerce and United Nations Industrial Development Organization, available online at <http://finance.sina.com.cn/roll/20110912/171710467302.shtml> (in Chinese).

Collier P. & Patillo C. (2000) “Investment and Risk in Africa St Martin and Mc Millan”. *Journal of International Trade and Economic Development* 8 (1) pp. 53-71;

Erica D., (2004), “The Chinese Energy Security Debate”, *China Quarterly*, no.177, pp. 21–41

Gilbert A., Falou S., (2008) “Drafting of Investment Policy Framework and Community Investment Code for ECOWAS Region”: ECOWAS Community Investment Code, *ACE, Asesores de Comercio Exterior, SL*, online at: www.acpbusinessclimate.org

Grace A. (2008) “Chinese Activity in Africa”, *Part 2: The Path of Least Resistance, Stanford Social Innovation Opinion blog*, available online at : <http://csi.gsb.stanford.edu/chinese-activity-africa-part-2-path-least-resistance-0>

He, “China- Africa Relations Moving into an Era of Rapid Development”, *Inside*, p. 6

Jing G. Dr (2009) “China’s Private Enterprises in Africa and the Implications for African Development”, *Institute of Development Studies, European Journal of Development Research Special Issue*, Vol. 21, 570-587

Joshua E. & Joshua R., (2003) “China must Play by the Rule in Oil-rich Sudan”, *Alexander’s Gas and Oil Connections*, vol. 8, no. 6, 21 August, p. 1.

Konings P. (2007) “China and Africa: Building a strategic partnership”, *Journal of Developing Societies*, 23(3) p. 341-367

Mohan and Kale, (2007) “The invisible hand of South-South globalisation: Chinese migrants in Africa”, *The Development Policy and Practice Department, The Open University, Milton Keynes, MK7 6AA, UK*, Page 7

Nathalie F., “Les Chinois à la conquête de l’Afrique” dans *Le Nouvel Observateur*, web, semaine du jeudi 11 mai 2006 - n°2166

Onuyeiwu S. & Shrestha, H. (2004) “Determinants of foreign direct investment in Africa”, *Journal of Developing Societies* 20, pp. 89-106

Pierre-Antoine B., “Afrique, nouvel horizon chinois”, dans *Le Monde du 10-12-2006*, p.16

Mary-Françoise R., (2011), “China’s Trade and FDI in Africa”, *African Development Bank*, Tunis, Tunisia, Series N°126, pp. 2-10

Rogoff, K. & Reinhart, C. (2003), “FDI to Africa: the role of price stability and currency instability”. *International Monetary Fund*, Working Paper 03/10

Shola O., (2007) “Sino-Africa Trade Relations”, *Journal of the Washington Institut of China Studies*, Spring, Vol.2, No 1, p. 98-105

Zafar, A. (2007), “The growing relationship between China and Sub-Saharan Africa: macroeconomic, trade, investment, and aid links”. *The World Bank Research Observer*, Vol 22, Issue1, p.103-130

BIOGRAPHY

Mr. Paulin Houanye is a Researcher in International Investment Law at School of Law in University of International Business and Economics in China. Assistant professor in Business Law and can be reached at University of International Business and Economics; Building 6 Room 547, No10 Huixin DongJie, Chaoyang District, Beijing, 100029, China; houanye@yahoo.fr

Mr. Sibao Shen is the Dean, Professor of Law and Academic Advisor for the doctorate of law program at the University of International Business and Economics (UIBE) Law School. Member of the Group of Law of the Degree Commission under the State Council in China and the Chairman of China International Economic Law Studies Association and the Special Advisor to the Supreme Court in China. Since early 1990's, Mr. Shen Sibao has been the senior Arbitrator of the China International Economic & Trade Arbitration Commission and served as Vice-Chairman from 1996 to 2004. He can be reached at University of International Business and Economics, 17th Floor, Building C, Grand Place, Huizhong Rd, Beijing, 100029, China, shens@yahoo.cn.

